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REMARKS

In response to the Office Action mailed February 25, 2005, Applicants respectfully request reconsideration. To further the prosecution of this Application, Applicants submit the following remarks, have added a claim and have canceled claims. The claims as now presented are believed to be in allowable condition.

Claims 1-6, 9-13 and 25-28 were pending in this Application. By this Amendment, claims 4, 7, 8, 11 and 14-24 have been canceled. Applicants expressly reserve the right to prosecute such at least some of the canceled claims and similar claims in one or more related Applications. Claim 29 has been added. Accordingly, claims 1-3, 5-6, 9-10, 12-13 and 25-29 are now pending in this Application. Claims 1, 9, 25 and 27 are independent claims.

Rejections under §102 and §103

Claims 1-6, 9-13, and 25-28 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,321,269 to Walker (hereinafter Walker). Walker discloses a method and system for optimized performance for transaction-oriented communications using stream-based network protocols.

The Examiner stated that, with respect to claim 4 of the present application, Walker discloses comparing an acknowledgment number received from the external transmission control protocol device to an aggregate size of the content; when the acknowledgment number is one of greater than and equal to the aggregate size of the content, refraining from sending another content segment; and when the acknowledgment number is less than the size of the aggregate content, sending another content segment. Applicants respectfully disagree with the Examiner's statement. The Examiner did not list where in the text of the Walker patent this is disclosed, but did reference Figures 4 and 5. A careful review of Walker at column 5, lines 28-53, reveals that Walker discloses the use of a Maximum Transmission Unit (MTU) and that this is used to determine when the remaining data to be sent is less than an MTU. When this

not the case, the next MTU of data is sent, and when the remaining data to be sent is less than an MTU, an ACK is sent to "poke" the server to send the remaining data even if it is not a complete MTU. Thus, in Walker, the results of the determination are to send another MTU if the remaining data is greater than an MTU, or to send a final segment when the remaining data is less than or equal to an MTU. In either case, the result of the comparison is that content data is sent.

In contrast to Walker, claim 1 has been amended to include the limitations of claim 4, and claim 4 has been canceled. Amended claim 1 now includes the step of comparing an acknowledgement number (reflecting the size of the data at the client) to the aggregate size of the content being sent. When the acknowledgement number is less than the size of the aggregate size of the content, another content segment is sent. However, when the acknowledgement number is greater than or equal to the aggregate size of the content being sent, no other content segments are sent. Thus, the result of the comparison is that in one case content is sent, and in the other, no content is sent.

Accordingly, since Walker sends content data whatever the result of the comparison, while claim 1 recites the sending of content data for one result and does not send content data for a second result, claim 1 patentably distinguishes over the cited prior art, and the rejection of claim 1 under 35 U.S.C. §102(e) should be withdrawn. Accordingly, claim 1 is now in allowable condition. Applicants note that the amendment to claim 1 does not require a new search, since the amendment to claim 1 comprises adding the limitations of claim 4.

If the Examiner is to maintain the rejection, Applicant asks the Examiner to point out with particularity where in the prior art amended claim 1 is taught.

Claims 9, 25 and 27 have been amended in a similar fashion as claim 1, and are believed allowable for the same reasons claim 1 is believed allowable. Because claims 2-3, 5-6, 10, 12-13, 26 and 28 depend from and further limit claims 1 9, 25 or 27, claims 2-3, 5-6, 10, 12-13, 26 and 28 are in allowable condition for at least the same reasons. Claims 4 and 11 have been cancelled.

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Claim 29 has been added and is believed allowable for the same reasons set forth above.

Conclusion

In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants' Representative at the number below.

Applicants hereby petition for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-0901.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,



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